HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.16941 OF 2007

Between:

Tuniguntla Satyanarayana

…Petitioner

AND

The Commissioner, Vizianagaram Municipality, Vizianagaram and another

...Respondents

: O R D E R :

Counsel for the petitioner : Shri C. Upendra for Shri E.V. Bhagiratha Rao

Counsel for respondent No.1 : Shri S. Nageswara Reddy

August 9, 2007

Per G.S.SINGHVI, CJ

This is a petition for quashing notice dated 26-5-2007 issued by Commissioner, Vizianagaram Municipality under Sections 189 and 192 (1) of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act') and Rules 360 and 361 of the Rules framed under the Act.

The petitioner claims to be proprietor of S.C.S.S.V.S.A. Flour and Dall Mill and Godown situated on Cheepurupalli Road, Vizianagaram. On 21-5-2007, respondent No.2 – Sakethi Suryanarayana got issued legal notice to the petitioner alleging that he had encroached on Ac.1.78 cents of land in Survey Nos.111, 105/6 to 8, 12 and 13 belonging to him (i.e. respondent No.2 and his family members). The petitioner sent reply
dated 28-5-2007 through his advocate and denied the allegation. Thereafter, Commissioner, Vizianagaram Municipality issued the impugned notice and directed the petitioner to remove the alleged encroachment measuring 21 feet x 42 feet in L.P.No.43/92 reserved site.

One of the grounds on which the petitioner has questioned the impugned notice is that the same was not preceded by any action oriented notice and opportunity of hearing.

Shri S. Nageswara Reddy, learned Standing Counsel for Vizianagaram Municipality says that the impugned notice can be treated as a show cause notice to which the petitioner may file reply and, thereafter, the competent authority will pass appropriate order in the matter of removal of the alleged encroachment.

In view of the statement made by the learned counsel for Vizianagaram Municipality, we do not consider it necessary to issue notice to respondent No.2 and dispose of the writ petition in the following terms:

1) The notice under challenge shall be treated as a show cause notice.

2) Within two weeks from today, the petitioner may file his

objections against the proposed removal of encroachment from the site specified in the notice.

3) Within next two weeks, the competent authority of Vizianagaram Municipality shall pass order for removal of the alleged encroachment made by the petitioner.

4) If the competent authority comes to the conclusion that the petitioner has not made encroachment, then no further action will be required to be taken. If on the other hand, the competent authority comes to the conclusion that the petitioner has encroached the land, then the latter be given seven days time to remove the encroachment, failing with the encroachment be removed by the municipal authorities by adopting all legally permissible measures including the use of force.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP No. 21644 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 9, 2007
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